IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 1.9.2006

Coram:

The Hon'ble Mr.JUSTICE S.RAJESWARAN

C.R.P.(NPD) No.1683 of 2002

Maheswari .. Petitioner

vs.

1.Ramanathan
2.Kundalammal
3.Chandra Ammal .. Respondents

Revision Petition filed against the order dated 23.10.2002, passed in I.A.No.63/2000 in O.S.No.40/2000, on the file of the Sub Judge, Gudiyatham, Vellore District.

For Petitioner : Mr.T.Dhanyakumar
For Respondents : Mr.R.Margabandu, for R1.

ORDER:

This Revision Petition has been filed against the order dated 23.10.2002, passed in I.A.No.63/2000 in O.S.No.40/2000, on the file of the Sub Judge, Gudiyatham, Vellore District.

2. The 2nd defendant in the suit is the revision petitioner before this court.

3. The 1st respondent/plaintiff filed O.S.No.40/1998 on the file of the Sub Judge, Gudiyatham praying to direct the defendants 1 and 2 in the suit to execute the sale deed in favour of the plaintiff in respect of the schedule mentioned property after receiving the balance sale consideration of Rs.47,900/- and for a permanent injunction not to interfere with their peaceful possession. The suit was decreed exparte on 7.9.1998.

4. The 2nd defendant filed a petition to set aside the exparte decree dated 7.9.1998 and as there was a delay of 130 days in filing the petition to set aside the exparte decree, an application in I.A.No.63/2000 was filed under Sec.5 of the Limitation Act to condone the delay of 130 days. The trial court by order dated 23.10.2002 dismissed I.A.No.63/2000 and aggrieved by the same, the above revision petition has been filed by the petitioner/2nd defendant.

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5. Heard the learned counsel for the revision petitioner and the learned counsel for the 1st respondent. I have also gone through the documents filed in support of their submissions.

6. The trial court dismissed I.A.No.63/2000 on the ground that no documents have been filed to prove the contention that the revision petitioner/2nd defendant took treatment for jaundice and ulcer in Chennai and Vellore and not even a medical certificate was filed to substantiate the illness, even though an undertaking was given to produce the medical certificate. Thus the trial court felt that the reasons given in the condone delay petition are not proved and are unreliable.

7. It is true that there are some contradictions in the averments made in the affidavit and also in the deposition made before the trial court. At the same time, the question of condonation of delay under Sec.5 of the Limitation Act should be liberally considered. In all cases of applications filed under Sec.5 of the Limitation Act, there will be some lapses on the part of the petitioner and that does not mean that the lis between the parties should not be finally decided on merits. Considering the fact that the suit is for specific performance, to meet the ends of justice, the delay could be condoned by imposing cost on the 2nd defendant for the default committed by her.

8. Hence the order of the trial court is set aside and the I.A.No.63/2000 in O.S.No.40/2000 is allowed on condition the revision petitioner/2nd defendant pays a cost of Rs.1,500/- (Rupees one thousand and five hundred only) directly to the learned counsel for the 1st respondent/plaintiff within two weeks from the date of receipt of copy of this order. It is also made clear that if the cost is not paid within the time stipulated above, the Civil Revision Petition shall stand dismissed without further reference to this court.

9. With the above direction, the Civil Revision Petition is allowed. No costs. C.M.P.No.17659/2002 is closed.

sks

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Sub-Judge, Gudiyatham, Vellore District.

1 CC TO MR.R. MARGABANDU, ADVOCATE (SR 40219)

1 CC TO MR.T. DHANYAKUMAR, ADVOCATE (SR 39970)

Pre-delivery order,
C.R.P.(NPD)1683/02.

1.9.2006

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